

**FINAL REPORT
TO THE ASSEMBLY AND SENATE
HOUSING COMMITTEES**



**HOUSING ELEMENT
WORKING GROUP**

APRIL 2004

**FINAL REPORT TO THE ASSEMBLY
AND
SENATE HOUSING COMMITTEES**

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APRIL 2004



I. INTRODUCTION

This final report summarizes and supplements the testimony provided to the Senate and Assembly Joint Housing Committee Hearing on the *Housing Element Working Group* (Group) on January 26, 2004. The report provides background on the establishment of the Group, outlines the proposals coming out of the Group and summarizes the areas where consensus was not achieved but important progress made on critical issues.

II. BACKGROUND

State law requires each city and county to adopt a general plan containing at least seven elements including housing. Unlike the other mandatory general plan elements, the housing element is subject to detailed statutory requirements regarding its content, and required to be updated every five years, and subject to mandatory review by a State agency – the Department of Housing and Community Development (HCD). Housing elements have been mandatory portions of general plans since 1969. This reflects the statutory recognition that the availability of housing is a matter of statewide importance and that cooperation between government and the private sector is critical to attainment of the State's housing goals.

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. Housing element law is the State's primary market-based strategy to increase housing supply. The law recognizes that in order for the private sector to adequately address housing needs and demand, local governments must adopt land-use plans and regulatory schemes that provide opportunities for, and do not unduly constrain, housing development.

While there is broad agreement about the importance of housing and the need to improve California's housing supply and affordability, the State, local governments, builders and affordable housing advocates have often disagreed about the implementation or effectiveness of the current law. Some local governments argue the State's review is inconsistent and that the law focuses only on planning not results. They indicate local governments with a history of producing housing are unfairly treated the same way as those who produce little housing. In addition, local governments also point out that California's housing crisis has more to do with inadequate housing funding and the need for State and local fiscal reform



than local regulatory barriers. Affordable housing advocates argue the law should be strengthened to ensure adequate enforcement, improve targeting requirements to ensure the law effectively addresses the needs of lower-income households and those with special needs, and tighten the requirement to zone sufficient land for all income levels. The development/building community looks to the housing element to ensure local governments zone sufficient residential land and remove regulatory barriers. Concerns have also been expressed about the lack of implementation of plans.

The State has historically supported the housing element as the most effective mechanism to ensure adequate planning for growth and housing development. The law recognizes the integral role housing plays in providing a decent quality of life for all residents and in ensuring the overall economic vitality of the State. The law also recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. The housing element is the only component of the general plan that requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests. Housing element law promotes the State's interest by encouraging open markets and providing opportunities for the private sector to address the State's housing demand, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels. The law acknowledges that while land-use planning is fundamentally a local issue, the availability of housing is a matter of statewide importance.

Further, while the law has traditionally focused on planning, given California's growing housing crisis, there has been a growing dialogue about the need to more directly focus efforts on results and measurable outcomes. As a consequence, over the past few years, a variety of legislative reforms have been proposed to address the specific concerns of the various stakeholders and to identify measures to improve the effectiveness of State housing element law in achieving its objectives.



III. THE HOUSING ELEMENT WORKING GROUP

At the beginning of the 2002/03 Legislative Session over eight bills were introduced addressing housing element issues. This followed lengthy and divisive deliberations on housing element reforms in the prior session. HCD proposed convening a Housing Element Working Group (Group) to develop a consensus in key reform areas. Legislative leaders/authors agreed to a housing element bill moratorium while the Group sought agreement. HCD worked with key stakeholder groups to identify Group membership. Critical stakeholders included local governments, Councils of Governments (COGs), planners, builders, and affordable housing advocates. Each of the major stakeholder groups selected one or two representatives (see appendix for complete listing) and unlike previous reform efforts, the membership included predominantly practitioners.

The Group convened for its first meeting in June 2003. To begin the effort, the Group identified common values, a purpose statement and priority reform areas to facilitate reaching consensus. The Group agreed the purpose of the housing element is:

To increase the availability of a mix of decent and safe housing affordable to all income groups, and the housing element process should be conducted in an efficient, planning-driven manner that is:

- *responsive to local conditions and needs,*
- *informed by local concerns and perspectives,*
- *developed to implement State housing policies,*
- *organized, reinforced, and implemented by local governments in their general plans, and*
- *consistent and predictable in its application across the State.*

Rather than focus on just one or two topics as originally anticipated, the Group ambitiously identified six basic areas for reform. These issues represent the areas the Group felt have the greatest potential for consensus and/or the most urgent need to address. The six priority areas were:

PRIORITY REFORM AREAS

1. Regional Housing Needs Assessment Process (RHNA)
2. Identification of Adequate sites/land
3. Increasing Housing Development Certainty
4. Performance-Based Certification
5. Enforcement
6. HCD Review Process



The Group met approximately every three weeks from June through November 2003. By late fall, the Group had made tremendous progress on reforms for the first three areas. The Group decided to commit to finalizing proposals on the RHNA process, identification of adequate sites, and increased housing development certainty by the end of December and to work for the first few months of 2004 to develop as much consensus as possible on the performance-based certification and housing element enforcement proposals. HCD also identified improvements to the State review process and committed to continuing to work with interested stakeholders on further enhancements including technical assistance materials and public participation concerns.

IV. CONSENSUS AREAS FOR LEGISLATION

The Group was successful in reaching consensus on the three areas and worked through many issues and concerns regarding performance-based certification and enforcement. In April, legislative proposals on RHNA, adequate sites and development certainty were forwarded to the Legislature. The following section of the report summarizes those proposals and outlines HCD commitments to improve the housing element review process. While the Group was not able to reach agreement on a specific proposal regarding performance-based certification and enforcement, critical discussions and issues were addressed. The final section of the report provides a framework for continuing discussions on these two critical issues.

RHNA REFORM PROPOSAL

Under existing law, HCD is required to allocate the region's share of the statewide need to Councils of Governments (COGs) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Plan (RHNP) allocating the regions share of the statewide need to the cities and counties within the region (based on a variety of factors including commuting patterns, market demand, employment opportunities and the availability of land and infrastructure). Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The RHNP is the only



component of the general plan that requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests.

The proposed amendments would ensure the regional housing needs process serves as an effective tool to facilitate housing development and create a more transparent and understandable public process by:

- Establishing clear state policy objectives to foster greater certainty for RHNA outcomes and to incorporate and balance broader public policy objectives. These range from increasing the mix of housing types to promoting infill development and equitable distribution of allocations for low- and very low-income households.
- Making the RHNA process more transparent, especially for local governments, by specifying a more inclusive process and revising allocation factors, and by providing for input into the methodology development by the councils of government (COGs). It provides for the COGs to solicit input from cities and counties about the factors and methodology for allocating need.
- Making the process more accessible and participatory for all stakeholders, and ensuring the methodology and required supporting information would be subject to public review (by units of government, by citizens and others).
- Modifying the HCD–COG regional determination process, adding allowance for a COG to file an objection to the proposed regional determination.
- Promoting better coordination between housing and the regional transportation planning processes.

ADEQUATE SITES PROPOSAL

Changes are proposed to the land inventory and adequate sites requirement to provide greater certainty in the housing development process and provide local governments with greater clarity and certainty about the statutory requirements. Increasing development certainty will promote an adequate



housing supply by streamlining the development approval process and by facilitating the identification of appropriate housing development sites. Greater housing element content clarity and development certainty are provided by:

- Increasing effectiveness of the housing element as a tool to facilitate housing development. Proposed amendments provide uniform content requirements for the land inventory to ensure local governments provide sufficient detail and information regarding the adequacy of sites to address the regional housing need. Housing elements that include sufficient information about the availability and suitability of appropriately zoned sites are a great resource for housing developers looking for land. Housing developers indicate their ability to use an adequate land inventory to identify potential housing development sites significantly streamline the development process. Developers will be able to rely on the housing element to identify the sites the local government believes are appropriately zoned and ready for residential development.
- Providing clarity and transparency of current requirements. While most of the proposed revisions are declaratory of existing law and practice, local governments have indicated including more specificity in existing law would provide greater assurance of clarity and consistency of state review. In addition, housing advocates have indicated greater clarity about requirements will ensure that all housing elements include comparable development opportunities information and facilitate housing construction (especially affordable housing).
- Promoting efficient use of land resources and providing local government with certainty regarding state review of the land inventory of the housing element.
- Increasing the effectiveness of a provision in current law that allows local governments to get “credit” for rehabilitation when identifying adequate sites.



DEVELOPMENT CERTAINTY PROPOSAL

Proposed changes would promote increased housing construction by strengthening the existing “use by right” process in housing element law by:

- Strengthening existing requirements that local government make sites available “by-right” if their land inventory does not identify existing sites commensurate with the regional housing need. These amendments increase affordable housing opportunities and development certainty in communities whose land inventories do not include adequate sites to address their regional housing need. Existing law requires the local government to make sites available by-right to meet their remaining regional share need which cannot be met with existing sites. The definition of “use by right” is strengthened to indicate the use will be allowed without the need for local discretionary approvals. Design review of project proposals is still permitted, provided that such review does not invoke discretionary review subject to CEQA.
- Clarifying the relationship between the sites inventory and the requirement to identify sufficient suitable sites to meet the locality’s regional need. The proposed reforms would require a locality’s housing element program for sufficient sites allow project densities that will help ensure the feasibility of new housing developments.
- Strengthening provisions of anti-NIMBY law including clarifying that if a locality includes a site for affordable housing use in its housing element site inventory, it cannot deny an affordable housing development on that site on the basis that the development is not consistent with current zoning or the general plan.
- Ensuring parking requirements for developments qualifying for a density bonus meet the needs of localities but do not jeopardize the development of otherwise appropriate housing on these sites.



HCD REVIEW PROCESS

After considerable discussion about how the current review process could be improved, HCD agreed to make the following improvements in its review and technical assistance process for local housing elements.

- ◆ Develop model elements and templates.
- ◆ Develop best-practices resource materials.
- ◆ Establish a system for lead regional representatives to facilitate greater understanding of specific issues and challenges of various regions and promote greater consistency in the review process and provision of assistance.
- ◆ Conduct internal quarterly consistency exercise for review staff.
- ◆ Develop an ongoing HCD staff peer review process supporting this consistency.
- ◆ Improve existing guidelines for housing element preparation. Consulting with stakeholders, HCD will either strengthen current guidelines or prepare formal regulations to guide review process and element preparation.
- ◆ Consult with stakeholders to identify gaps in current technical assistance resources. Expand and improve technical assistance as resources allow.

HCD also agreed to convene a group of interested stakeholders to continue working on improvements to the review process including citizen participation and conditional compliance issues.

V. PERFORMANCE BASED CERTIFICATION & ENFORCEMENT

PERFORMANCE BASED CERTIFICATION

The Group committed to identify areas of consensus regarding an alternative certification process. Under current law, HCD is required to review housing elements and make written findings regarding their compliance with State housing element law. A local government must consider HCD's findings prior to adopting the housing element and either revise the element to address HCD's review or adopt the element with written findings describing why the element



complies with the law in spite of HCD's findings. Local governments must then submit their adopted element to HCD for final review for compliance with State law.

As the housing element is the only component of a local government's general plan subject to mandatory state review, it has historically been the source of conflict between state and local governments. State law and practice recognizes and respects the principal of local control. However, because housing is an issue of statewide importance and local decisions about housing development can have significant impacts beyond local borders, the State has an interest and role in ensuring local plans and policies provide opportunities for and do not arbitrarily constrain adequate housing supply.

Local government representatives have proposed establishing a self-certification process for cities and counties that meet certain production standards (e.g. produced 15 percent of their regional housing need for lower-income households). Such a proposal would allow local governments to avoid State review provided they meet specified performance measures. While others in the Group expressed some support for the idea that different review standards may be appropriate for local governments with a strong track record of performance, they also argued such reforms must be coupled with meaningful enforcement tools for communities which violate housing element law. There were also members of the Group who did not believe it would ever be appropriate to allow a self-certification model. However, after numerous meetings and discussions, the Group agreed to the following as principals for any performance-based review system:

1. Prior housing element must have been found in compliance by HCD.
2. Production thresholds should be based on the RHNP.
3. The housing element must be adopted in conformance with statutory timeframes and submitted to HCD.

The Group also agreed that performance-based certification must be linked to developing an appropriate enforcement mechanism (see next section). The following summarizes the issues the Group considered while working to find common ground on a performance-based certification process:



Performance Standard: There was a significant difference in perspective about the appropriate performance standard. Such differences included:

How can we establish a fair yet meaningful performance standard?

One critical issue in setting a performance standard is the lack of historic, consistent data on the production of affordable housing to consider as a benchmark, or to assess variability within the State. The Group solicited and considered existing data, but there was no existing source that was considered valid for use statewide; COGs that have made attempts at collecting such data in the past have found it difficult if not impossible. All agreed there is a need for objective, statewide reporting on a standardized basis.

A production standard of 15 percent of a local government's share of the regional housing need for very low-, low- and moderate-income households, was proposed by some of the local government representatives. The Group also discussed the need for a higher standard. While there were members of the Group who could not agree to rewarding local governments for producing anything less than 100 percent of their need, others talked about establishing a standard of at least 50 percent of the lower-income need and 80 percent of the total need. The representative for the CBIA consistently expressed opposition to any performance standard that was not linked specifically to the amount of funding available to produce the affordable housing. Otherwise, CBIA argued that performance standards would result in local governments imposing new or more onerous inclusionary obligations. Others felt that any performance standard below the need would be treated by local governments as a cap and act to reduce overall housing supplies.

Should the standard be exclusively for affordable housing or include a supply component?

The Group had numerous discussions about the need to include production targets for the total RHNA in any performance standard. Most agreed it was critical to measure performance in meeting affordability goals as well as goals related to the overall housing supply. However, as with the discussion related to the affordability target, it was



difficult to agree on an appropriate standard. The ranges for a supply standard varied from 50 percent to 80 percent of the total RHNA.

Should the standard be related to production only, or should it include planning and barrier removal standards?

The Group also discussed the need for any performance standard to include non-production measures. For example, many members felt the most critical components of housing element law are the requirements related to zoning sufficient land for housing development and the removal of regulatory barriers to the development of housing. To ensure these objectives of the law are adequately addressed, some members argued that performance standards must include planning and regulatory objectives such as limitations on growth control measures and demonstrating a certain percentage of all residentially designated land is zoned for multifamily. Other members wanted to ensure other critical housing element requirements that cannot be measured by a “production” standard, be addressed, including fair housing and providing sites for emergency shelters, transitional housing and farmworkers.

Many members of the Group agreed however, that the need for additional planning measures was related to how high the performance standard was set. The lower the performance standard, the greater the need for planning and regulatory measures.

Should performance be measured by new construction or include other forms of assistance?

Issues about whether the performance standard should be related exclusively to new construction versus other forms of assistance were also discussed. Some members of the Group felt the standard should be exclusively related to new construction. Others believed it would be appropriate to allow some other forms of assistance (such as rehabilitation) to count towards a performance standard as long as it was limited to no more than 25 percent. Other members argued it would be appropriate for as much as one half of the standard to be met through non-new construction.



The Group also discussed the following critical issues in considering a Performance Based Certification process:

Eligibility for Performance Based Certification: Some members of the Group assert that HCD should be responsible for verifying the eligibility of local governments to self-certify (i.e., have they met the performance standards?). This was especially critical to some members since the actual housing element would not be undergoing State review. Others strongly opposed such a provision as inconsistent with the notion of self-certification. There were lengthy discussions to determine whether the Group could come up with objective standards or a self-certification checklist that HCD could verify.

Safeguards: Members of the Group who were generally opposed to self-certification indicated any such process would need to include safeguards to ensure the objectives of state law were being met. For example, proposals were discussed regarding limitations on the number of times a community could self-certify in a row or having HCD conduct a limited number of random audits of self-certified elements.

Public Participation: The Group also discussed the need to ensure adequate and sufficient public participation in both the performance-based certification process and in the adoption of the housing element. The Group generally agreed that this was important and appropriate.

Incentives: All members agreed there is a need to provide better incentives and rewards for local governments to address housing needs. The Group agreed that issues relating to the fiscalization of land-use, a permanent source of financing for affordable housing, and infrastructure financing must be addressed for California to more effectively meeting its housing needs.

Enforcement: Most members of the Group agreed that any proposal related to performance-based certification had to be linked with proposals regarding enforcement. In addition there was significant discussion about the presumption of validity for jurisdictions that use a performance-based certification process and the burden of proof in any challenge to a self-certified element.



While the Group had many fruitful discussions about these and other issues, consensus was not reached. The following represents the final range of proposals under discussion at the time of the conclusion of the Group:

PROPOSAL 1: LEAGUE OF CITIES

Production-Based Certification: An Alternative Planning Process for the Production of Affordable Housing

Good Actors: Only applies to local governments who have demonstrated good faith efforts to plan for and approve affordable housing in either of the following ways:

- Received HCD housing element certification in the prior planning cycle and produced a percentage of its low and very low RHNA.
- Approved construction of at least half of their RHNA affordable housing goal in the prior planning cycle.

Realistic Production Standard: Local governments proposing to certify their housing elements based upon production must comply with the following:

- *Production Goal*: Establish a production goal of at least 20 percent of their RHNA allocation of low- and very low-income housing. At least one-third of the units produced must be very low-income. The local government must identify the specific probable future projects, and certain mandatory local policies, practices, development standards, and strategies to achieve the production target over the planning cycle. Examples of development standards: minimum density; reduced development impact fees; higher densities; by-right development for multifamily; clear urban design guidelines and; clear procedures for review.
- *Rehabilitation*: Jurisdictions with any of the following three characteristics may elect to produce no more than 40 percent of the above production number through rehabilitation: (1) jurisdictions where more than 60 percent of housing stock was built prior to 1980; (2) jurisdictions where less than 5 percent of land is not developed for urban uses; or (3) jurisdictions which have enacted policies to protect surrounding agricultural and open space lands from development.



- *Substantial Compliance with Housing Element Requirements:* Jurisdictions must identify adequate sites and include all required Government Code Section 65583 housing element components.
- *Enhanced Public Participation:* Local governments proposing to certify their housing elements must comply with the following procedures:
 - *Notice of Preparation:* Publish/post/notify interested parties and HCD of “notice of preparation” of resolution considering production-based certification. “Notice of preparation” is standard format and includes information such as: description of production-based certification process; information being considered (possible sites, projects and development standards); opportunity for informal public input.
 - *Scoping Session:* Notice scoping session for production-based certification resolution. Invite public input – including HCD/comments. Conduct scoping session to consider probable future projects (invite property owners); development standards; other housing element contents (special needs, etc.).
 - *Administrative Draft:* Produce administrative draft of resolution adopting production-based certification and send to interested persons/HCD for comments and revise accordingly.
 - *Public Hearings:* Planning Commission to consider draft resolution (revised administrative draft). Public hearing; written and oral comments (including HCD). City Council considers draft resolution – same process.
 - *Final Draft:* Final resolution must respond to all comments received in the draft resolution process.
- *Accountability*
 - *Annual Review:* Progress towards meeting production goal – public hearing; notice all persons who submitted comments to draft, participating in scoping session, etc.



- Annual Report: Local governments annually send to HCD a report documenting the findings of the Annual Review.
- HCD Audits: After three years, or if a local government fails to submit the annual report, HCD may conduct random audits to determine if communities are not making significant progress toward achieving the established performance goals.
- Losing Eligibility: Jurisdictions, who fail to achieve the production standard, are not eligible to use production-based certification in the next planning cycle.
- Program Sunset: The program sunsets after the next two planning cycles, providing the Legislature the ability to fully assess whether or not the program should continue.

PROPOSAL 2: NON-PROFIT HOUSING DEVELOPER

(developed by representatives during the last Group meeting)

Thresholds for Performance Based Certification: To qualify for a Performance-Based Certification a local government must have:

- HCD verification that performance-based certification had been met (HCD would only evaluate whether the criteria for performance-based certification had been met), and
- Either:
 - the local government has met 40 percent of its low- and very low-income housing need, had an HCD certified housing element in the prior period and met 80 percent of its total RHNA;

-OR-

- if the local government did not have a prior HCD certified housing element, has met 100 percent of its RHNA (both affordable and total RHNA).

Two additional requirements would apply for both alternatives. First, there would be a 25 percent cap on the amount of affordable senior housing that could be used to address the production standard and no more than 25 percent of need could be met through rehabilitation or other forms of assistance. Finally, because there is a concern that



jurisdictions with a small RHNA may be able to easily meet these performance standards, only jurisdictions with RHNAs above a certain number could self-certify or a jurisdiction would have to produce a minimum number of units to qualify.

- Public Participation (some level of enhanced participation would be required).
- This proposal is linked to achieving consensus on a meaningful enforcement mechanism.

While the majority of Group members believed these two proposals represented good faith efforts by the respective stakeholders to develop consensus, there was not unanimous support for either. Neither proposal addresses the concern about any performance standard being treated like a cap on development or that it would incentivize new or tougher inclusionary policies. In addition, neither addresses the concern by some members that housing element requirements related to non-production standards (fair housing, sites for emergency shelters, etc.) would be undermined.

While the Group was not able to reconcile these two proposals, it was the agreement of the Group that the two proposals represent a meaningful framework to continue working on developing consensus.

ENFORCEMENT

Current law does not provide penalties for non-compliance. While certain State funds (predominantly housing funds) are linked to a local government's compliance with housing element law, this mechanism to promote compliance has been criticized as ineffective. Many have argued withholding housing funds from jurisdictions without an adequate housing element is an ineffective enforcement tool because many of those jurisdictions do not want housing funds in the first place. Currently, enforcement occurs only through private litigation, which is also widely believed to be a costly and inefficient system to ensure compliance with State law.

At the final meeting of the Group, the Enforcement subcommittee presented a preliminary proposal that represented the results of the Group's efforts thus far. Enforcement discussions were predicated on achieving clarity



of housing element requirements, so that localities know what is needed to comply, and on establishing objective criteria to make enforcement as uncomplicated and automatic as possible. The Group agreed that any enforcement proposal should distinguish “bad actors” from the majority of local governments and that penalties and enforcement should be weighted based on the level of noncompliance. The Group also agreed there was a need to consider enforcement actions for non-performance of performance-based certified elements. The preliminary enforcement proposal included:

- Separate out the bad actors for all other jurisdictions:
 - To be a “bad actor” the following conditions must be present:
 - Element must be determined out of compliance or element not submitted; and
 - Failure to produce a certain percent (between zero and 10 percent was considered) of its very low- and low-income RHNA, not including senior housing, so long as there has been more than zero development applications; and
 - A lack of objective planning standards, including one from the following list: (1) no parcels zoned multifamily, or (2) density standards below the minimum established by development certainty proposal or (3) growth controls that limit the number of building permits, etc.
 - Findings: Objective standards would be established so that HCD could make this finding.
 - Penalty:
 - A fine determined by the following equation: a defined percentage of the jurisdiction’s very low- and low-income RHNA (between 30 and 100 percent) multiplied by the actual amount of gap financing needed to produce such housing in that area, as established by an objective, uniform source. Fines would be paid into an established housing trust fund (a State fund, a regional trust fund, etc.) on a yearly basis.



- In addition or where appropriate, local governments with redevelopment agencies would have to increase the amount of housing set aside funds required for their low- and moderate-income fund.
- Cities that are not performance-based certified and that have a housing element determined by HCD to be out of compliance, or which haven't submitted a housing element pursuant to the statutory deadline, but aren't "bad actors."
 - Penalty:
 - If sued, the jurisdiction has the burden of proving its housing element is valid.
 - If the jurisdiction does not meet its burden, the court must choose at least one of the planning/stay-of-development remedies listed in Government Code Section 65755, in addition to any other available remedies. Section 65755 authorizes a court, where it has found an element to be out of compliance, to suspend the locality's power to issue building permits, zone changes, variances and subdivision maps. On the other hand, the statute permits the court to mandate certain residential permit and map approvals where such approvals will not interfere with the jurisdiction's adoption of a compliant element. Penalties could also be imposed depending on the court's finding of the degree of noncompliance.
- Cities that have a housing element in compliance but does not implement or takes actions in conflict with the element
 - Penalty:
 - Clarify and strengthen existing laws allowing a court to order the program to be implemented.

Potentially allow decertification of the element upon an appropriate finding by HCD where it has identified certain actions or programs as critical to compliance.

While the Group all agreed the preliminary proposal represented significant work and progress the following concerns were raised:



1. Definition - “bad actors”: Concern was raised that having production standard here would act to encourage local governments to adopt inclusionary policies to ensure they will not fall into this category. Strong concerns were raised that this criteria does not encourage local governments to plan, zone and assist in building housing.
2. Regarding Fines: Concern about where money collected through fines would have to be spent. Generally agreed any fine that went into a trust fund should be required to be spent for affordable housing in the jurisdiction being fined.

The level of fines to be imposed was the subject of much discussion. Fines need to be high enough to be a meaningful penalty (and hopefully motivate compliance) but not unreasonable.

Some members of the Group expressed concern that it would be politically and practically difficult to adopt significant enough fines to act as a deterrent; the more appropriate and meaningful penalty would be a limitation on local land use authority (similar to Massachusetts appeals process or the New Jersey “builder’s court”).

Other members of the Group suggested coming up with stronger Anti-NIMBY standards (under Government Code Section 65589.5) as an enforcement vehicle and a way to ensure housing development.

The Group tried to identify a middle ground between a significant sanction that reduced local land-use authority and local governments’ strong opposition to that approach. The Group felt that there might be movement but was not able to complete the discussion.

VI. CONCLUSION

The Housing Element Working Group process represents a significant accomplishment in developing important public policy. Members of the Group effectively represented their respective organizations, while working to understand and appreciate the values and perspectives of others. The leadership and dedication of the members were critical to the success of the Group. Each member brought real world practical experience and a commitment to the goal of improving housing conditions in California. These



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commitments and a true collaborative spirit enabled the Group to develop three significant reform proposals and to break new ground on issues which had previously divided stakeholders. Despite the fact that official meetings of the Group concluded in March, the majority of the members of the Group agreed to continue to work cooperatively and expressed interest in working with Legislative leaders to craft a meaningful performance-based certification and enforcement proposal.



HOUSING ELEMENT WORKING GROUP MEMBERSHIP

Organization	Representatives
League of California Cities	Honorable Anna Caballero, Mayor <i>City of Salinas</i> Betsy Strauss, Special Counsel <i>League of California Cities</i>
California State Association of Counties	Pete Parkinson, Planning Director <i>County of Sonoma</i> Eric Jay Toll, <i>previous</i> Planning Director <i>County of Mariposa</i>
California Chapter American Planning Association	Vince Bertoni, Planning Manager <i>City of Santa Clarita</i> Janet Ruggiero, Community Development Director <i>City of Citrus Heights</i>
Councils of Governments	Alex Amoroso, Principal Planner <i>Association of Bay Area Governments</i> Susan Baldwin, Senior Regional Planner <i>San Diego Association of Governments</i> Lynn Harris, Manager of Community Development Jacob Lieb, Senior Regional Planner <i>Southern California Association of Governments</i>
Non-Profit Housing Developers	Tom Collishaw, Deputy Director <i>Self-Help Enterprises</i> Dara Kovel, Regional Director <i>Mercy Housing California</i> Sam Mistrano, Deputy Director <i>Southern California Association of Non-Profit Housing</i> Doug Shoemaker, Policy & Program Director <i>NonProfit Housing Association of Northern California</i>
Housing Advocates	Ilene Jacobs, Director of Litigation/Advocacy <i>California Rural Legal Assistance</i> Mike Rawson, Director <i>California Affordable Housing Law Project</i>



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For-Profit Builders	Bruce Houdesheldt Kimberley Dellinger <i>California Building Industry Association</i>
Business Group	Shiloh Ballard, Associate Director of Transportation and Land Use <i>Silicon Valley Manufacturing Group</i>
State Department of Housing and Community Development	Cathy Creswell, Deputy Director Linda Wheaton, Assistant Deputy Director Mark Lovington, Senior Staff Counsel
Facilitator	Maureen Kennedy (thru December)
Staff Support	Leah Northrop, Housing Policy Analyst Rita Levy, Housing Policy Analyst Therese Weathers-Reyes, Administrative Analyst
Observers	Mark Stivers, Chief Consultant <i>Senate Committee on Housing and Community Development</i> Hugh Bower, Chief Consultant <i>Assembly Committee on Housing and Community Development</i>